

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles R. Norgle	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 C 1263	DATE	11/4/2011
CASE TITLE	Otis Nicholson vs. Synch Solutions, et al.		

DOCKET ENTRY TEXT

Otis Nicholson's motion for leave to file a fifth amend complaint and add additional parties [84] is granted. If HNTB, AMS Dean, or ISTHA files a motion to dismiss the fifth amended complaint, Nicholson has fourteen days in which to file a response, with a reply due seven days thereafter.



■ [For further details see text below.]

Docketing to mail notices,
*Copy to judge/magistrate judge.

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Before the Court is *pro se* Plaintiff Otis Nicholson's motion for leave to file a fifth amended complaint and add additional parties. For the following reasons, Nicholson's motion is granted.

"The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). "It is, by now, axiomatic that district courts have a special responsibility to construe *pro se* complaints liberally and to allow ample opportunity for amending the complaint when it appears that by so doing the *pro se* litigant would be able to state a meritorious claim." Kaba v. Stepp, 458 F.3d 678, 687 (7th Cir. 2006) (quoting Donald v. Cook Cnty. Sheriff's Dep't, 95 F.3d 548, 555 (7th Cir. 1996)).

Nicholson filed a five-count fourth amended complaint on June 17, 2011. Without permission of the Court, the fourth amended complaint added three new defendants – AMS Dean, HNTB, and the Illinois State Toll Highway Authority ("ISTHA") – and a claim under 42 U.S.C. § 1985, which was subsequently dismissed. Nicholson now seeks to cure the procedural deficiency by seeking leave to add AMS Dean, HNTB, and ISTHA. In addition, Nicholson seeks to add a breach of contract claim. With the exception of the breach of contract claim, the proposed fifth amended complaint appears identical to the fourth amended complaint.

In its September 19, 2011 Minute Order, the Court noted that, "[i]f Nicholson seeks to pursue additional claims in this matter, he must attempt to do so under Federal Rule of Civil Procedure 15(a), which governs amendment to pleadings." Nicholson has done so here. Because leave to amend is freely granted, and because Nicholson appears *pro se*, Nicholson's motion for leave to file the fifth amended complaint and add additional parties is granted. Nicholson is admonished that this shall be the final amended complaint permitted in this case, which is over two years old.

Defendant HNTB filed a motion to dismiss the fourth amended complaint on September 1, 2011. The fifth amended complaint, however, supersedes all previous complaints and controls the case from this point

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forward. See Flannery v. Recording Indus. Ass'n of Am., 354 F.3d 632, 638 n.1 (7th Cir. 2004). If HNTB, AMS Dean, or ISTHA files a motion to dismiss the fifth amended complaint, Nicholson has fourteen days in which to file a response, with a reply due seven days thereafter.

IT IS SO ORDERED.